IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2017

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THE HONOURABLE MR.**JUSTICE M.M.SUNDRESH**

O.P.No.379 of 2010

The Director,
M/s India Infoline Ltd.,
Bldg. No.75, Nirlon Complex,
Off.W-E. Highway, Goregaon (East),
Mumbai-400 063.
(Trading Member) ..Petitioner

Vs.

1.Mr.Ramesh Narayan Daphale,
Flat No.201,"Narayan",
Sai Tower Apartments,
Opp. Maratha Mandir Karalaya,
Near Railway Over Bridge,
Indraprastha Nagar, Belgaum-590 002.
Karnataka (Constituent).

2.Mr.V.Paul Das,
Sole Arbitrator,
National Stock Exchange of India Limited,
2nd Floor, Ishpahani Cenre,
Door No.123-124, Nungambakkam High Road,
Nungambakkam, Chennai-600 034. ... Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the impugned Award dated 21.07.2009 passed by the second respondent in Arbitration Matter (A.M.) No.CM/C-

0030/2009.

For Petitioner : Mr.M.Vidya

For Respondents : Mr.S.R.Raghunathan for R1

ORDER

The first respondent herein entered into an agreement with the petitioner as broker. Accordingly, the first respondent has opted for both online and offline facilities.

2. An agreement was signed on 16.11.2007. The first respondent accordingly opened a trading Account on 01.12.2007. Initially, the first respondent gave a stop loss instructions in respect of four shares, which they are concerned with. According to the first respondent, the petitioner removed the stop loss opened in the first respondent's account without his consent. This was done on 03.03.2008. On the next day itself, the first respondent sent a mail objecting the removal without his consent. Resultantly, in all the four shares, the profit earned for the two shares was adjusted with a loss. It is needless to state that there was a sensex crash by dropping 900 points on 03.03.2008. Therefore, the first respondent approached the Arbitration Tribunal alleging that had the instructions been followed,

the loss would have been only Rs.3,050/- and in such an eventuality, the profit was adjusted with the other two shares.

3. The learned Arbitrator awarded a sum of Rs.86,390/- holding that in the absence of any material to substantiate that the stop loss orders were removed on the instructions of the first respondent, the liability cannot be disputed. Challenging the same, the present original petition has been filed.

4. The learned counsel appearing for the petitioner would submit that only with the consent of the first respondent, the decision was made to sell, even otherwise there is no base for the amount quantified as awarded by the learned Arbitrator.

5. The learned counsel appearing for the first respondent would submit that it is a case of unilateral adjustment. Notwithstanding the stop loss instructions given, there is absolutely no material to hold that a consent was given to remove the stop loss action.

6. As rightly observed by the learned Arbitrator, there is absolutely no material to hold that the stop loss option was removed in

the first respondent's account with his consent. In the case on hand, there is no dispute that the sensex has lost 900 points on the single day i.e., on 03.03.2008. Therefore, the finding of the learned Arbitrator that the removal was made without consent cannot be found fault with. On facts, it is also not in dispute that the adjustment was made with on the profit made on two other shares. Therefore, this Court is of the view that there is no error in the award passed by the learned Arbitrator. Accordingly, this original petition stands dismissed.

13.10.2017

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M.M.SUNDRESH,J.

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